

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 42108

THE SPRINGFIELD TERMINAL RAILWAY COMPANY—PETITION FOR  
DECLARATORY ORDER—REASONABLENESS OF DEMURRAGE CHARGES

Decided: June 22, 2009

On July 8, 2008, The Springfield Terminal Railway Company (ST) filed a petition for declaratory order seeking to have the Board resolve a dispute over demurrage charges that ST assessed against Fore River Warehousing and Storage Co., Inc. (Fore River) in April, May, June, and October of 2004 (2004 charges) and in May, June, July, and August of 2006 (2006 charges). By decision served on February 10, 2009 (February 10 decision), the Board instituted a declaratory order proceeding and established a procedural schedule.<sup>1</sup> By decision served on March 26, 2009, at the joint request of the parties, the Board enlarged the scheduling deadlines, making the completion of discovery due by July 1, 2009, Fore River's reply statement due by September 1, 2009, and ST's rebuttal statement due by September 25, 2009.

On May 18, 2009, Fore River filed a motion to compel responses to discovery requests and enlarge scheduling deadlines. Fore River states that it served discovery requests upon ST on March 17, 2009 and that responses were due by April 1, 2009. As of May 18, 2009, Fore River states that it had not received any responses or objections to its discovery requests and asks that the Board compel ST to provide Fore River with the information requested in its discovery requests. Fore River also asks that the Board enlarge the scheduling deadlines to give it additional time to review ST's responses once they are received and to conduct additional discovery based on those responses. Specifically, Fore River seeks to have the deadlines enlarged so that: completion of discovery is due three months from the date that ST serves responses to Fore River's discovery requests; Fore River's reply statement is due two months from the discovery deadline; and ST's rebuttal statement is due 24 days after the deadline for Fore River's reply statement.

In a reply filed on June 1, 2009, ST represents that it provided Fore River with responses to its discovery requests on May 22, 2009 (unsigned responses), and May 28, 2009 (signed

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<sup>1</sup> In the February 10 decision, slip op. at 3-4, the Board determined that it would address only the 2006 charges, unless ST obtains an order from the court that the 2004 charges are not time-barred by the 3-year statute of limitations. See 49 U.S.C. 11705(a).

responses). ST also states that it does not object to the requested enlargement of the scheduling deadlines.

The motion to compel will be denied as moot because ST represents that it has provided Fore River with responses to its discovery requests. However, due to ST's delay in providing those responses, the request to enlarge the scheduling deadlines is reasonable. Accordingly, the scheduling deadlines will be enlarged so that: completion of discovery is due by August 28, 2009 (three months from the date that ST provided Fore River with signed responses to its discovery requests); Fore River's reply statement is due by October 28, 2009 (two months from the discovery deadline); and ST's rebuttal statement is due by November 23, 2009 (26 days from the deadline for Fore River's reply statement). In the February 10 decision, slip op. at 4, n.7, the Board indicated that the parties should not presume that the institution of this declaratory order proceeding tolls any statute of limitations applicable to the disputed 2006 charges and that any arguments as to tolling would have to be made in court. Based on the proposed procedural schedule, it appears that the 2006 charges may fall outside the 3-year statute of limitations under 49 U.S.C. 11705(a).

Fore River also asks that the Board award it reasonable expenses, including attorney's fees, caused by ST's delay in responding to Fore River's discovery requests. In its reply, ST opposes the request for expenses. In the past, the Board has not awarded expenses, such as legal fees.<sup>2</sup>

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The motion to compel is denied.
2. The motion for enlargement of scheduling deadlines is granted.
3. Discovery will be completed by August 28, 2009.
4. Fore River's reply statement is due by October 28, 2009.
5. ST's rebuttal statement is due by November 23, 2009.

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<sup>2</sup> See generally PCI Transportation v. Fort Worth & Western Railroad Company, STB Docket No. 42094 (Sub-No. 1), slip op. at 6, n. 14 (STB served Apr. 25, 2008) ("the Board does not generally award attorneys fees"); Groome & Associates, Inc. and Lee K. Groome v. Greenville County Economic Development Corporation, STB Docket No. 42087, slip op. at 18 (STB served July 27, 2005) (explaining that there is no statutory authority for the Board to award legal fees).

6. This decision is effective on its date of service.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary